

REMARKS

Claims 12 to 26, 30 to 34 and 37 to 40 are canceled without prejudice, since these claims have been previously withdrawn in view of the prior restriction requirement. Also, claims 3, 28 and 36 are canceled, and claims 41 to 46 are added. Accordingly, claims 1, 2, 4 to 11, 27, 29, 35 and 41 to 46 are now pending.

Applicants respectfully request reconsideration of the present application in view of this response.

Applicants respectfully request that the Examiner acknowledge whether the Drawings are accepted in the next Office communication.

Applicants thank the Examiner for acknowledging the foreign priority claims and that the priority documents have been received, and for acknowledging and considering the IDS and 1449 papers and related references of 11/04/04, 11/05/02, 12/21/01 and 8/18/99.

Claims 12 to 26, 30 to 34 and 37 to 40 are canceled without prejudice, since these claims were previously withdrawn in response to the restriction requirement.

With respect to paragraph three (3) of the Office Action, claims 1-8, 11, 27-29, 35 and 36 were rejected under 35 U.S.C. § 102(b) as anticipated by Fan, U.S. Patent No. 5,337,308.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter, as discussed herein. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully

submitted that any anticipation rejection premised on the inherency doctrine must fail absent the foregoing conditions.

While the anticipation rejections may not be agreed with, including in view of the foregoing, to facilitate matters and to better clarify the claimed subject matter, claim 1 as presented now provides that the means of the basic switch includes the features of *plural cross-point, in which at each of the cross-points an input line and an output line are crossed, and wherein the plural cross-points are layered, each cross-point including: an address filter for extracting a cell arriving from the input line; a first buffer which stores the extracted cell; a second buffer which stores a cell arriving from another cross-point; and means for comparing time information of a head cell in said first buffer with time information of a head cell in said second buffer and for sending a head cell with earlier time information to the another cross-point or said output port.*

These features of claim 1 as presented are based on Figure 14 and the corresponding descriptions in the specification. The Fan reference (as well as the other references relied upon) does not identically describe or even suggest a basic switch including the claimed layered cross-points each including an address filter, as provided for in the context of claim 1 as presented. Since the switch of the presently claimed subject matter has the layered cross-points each having the recited features, the cell sequence can be ensured in each basic switch. Accordingly, claim 1 as presented is allowable for the foregoing reasons.

Claims 3, 28 and 36 have been canceled without prejudice, and claim 4 now depends from claim 1 and not canceled claim 3.

Claims 4 to 10 depend from claim 1 as presented, and are therefore allowable for the same reasons as claim 1 as presented.

Independent claims 2, 11, 27, 29 and 35 have been rewritten to include features like those of claim 1 as presented, and are therefore allowable for essentially the same reasons as claim 1 as presented.

Accordingly, each of independent claims 1, 2, 11, 27, 29 and 35, and their respective dependent claims, are allowable, as explained above.

As regards paragraph five (5), claim 9 was rejected under 35 U.S.C. § 103(a) as unpatentable over the "Fan" reference in view of Averbuch et al., U.S. Patent No. 6,160,805.

Claim 9 depends from claim 1 as presented, and is therefore allowable for the same reasons as claim 1 as presented, since the secondary reference does not cure the critical deficiencies of the primary "Fan" reference. Accordingly, claim 9 is allowable.

As regards paragraph six (6), claim 10 was rejected under 35 U.S.C. § 103(a) as unpatentable over the "Fan" reference in view of Henrion, U.S. Patent No. 5,127,000.

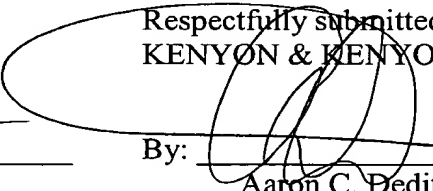
Claim 10 depends from claim 1 as presented, and is therefore allowable for the same reasons as claim 1 as presented, since the secondary reference does not cure the critical deficiencies of the primary "Fan" reference. Accordingly, claim 10 is allowable.

New claims 41 to 46 do not add any new matter and are supported in the specification. New claims 41 to 46 respectively depend from claims 1, 2, 11, 27, 29 and 35, and are therefore allowable for the same reasons as claims 1, 2, 11, 27, 29 and 35 as presented. Claims 41 to 46 are allowable for the further reason that they include the feature of a selection process of the head cell with a probability 1 to k-1, as provided for more fully in the context of each of dependent claims 41 to 46, which feature the references relied upon do not identically describe or even suggest in any way. The features of the new claims are based on the disclosure at page 24, lines 4 to 23, in the specification, for example. Accordingly, claims 41 to 46 are allowable.

In summary, it is respectfully submitted that all of claims 1, 2, 4 to 11, 27, 29, 35 and 41 to 46 of the present application are allowable at least for the foregoing reasons.

CONCLUSION

In view of the foregoing, it is believed that the rejections have been obviated, and that claims 1, 2, 4 to 11, 27, 29, 35 and 41 to 46 are allowable. It is therefore respectfully requested that the rejections be withdrawn, and that the present application issue as early as possible.

Dated: 3/16/05 By: 
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